IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

OP.No. 31622 of 2001(M)

PETITIONER:

AUGUSTHY MATHAI, KIZHAKKEMANACKAL HOUSE,
OTTALLOOR P.O., KARIMKUNNAM,
THODUPUZHA, IDUKKI DISTRICT,

BY ADV. SRI.K.K.SATHEESH

RESPONDENT:

UNION OF INDIA REP.BY THE
UNDER SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
FREEDOM FIGHTERS' DIVISION
LOK NAYAK BHAVAN, NEW DELHI 110 003.

BY ADV. SRI.FRANKUR D.JAYAN, ADDL.CGSC
SRI.MOHAMMED SHAH, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.31622/2001

ORDER ON CMP. NO.51522/2001 IN OP. NO.31622/2001

DISMISSED

03.08.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RELEVANT PORTION OF THE SSS PENSION SCHEME, 1980.

EXTP2:- COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR, IDUKKI DT. 25.10.83.

EXT.P3:- COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR SSS PENSION DT. 29.10.87.

EXT.P4:- COPY OF THE PKC ISSUED BY SRI.CHERIAN J.KAPPAN EX-MP.

EXT.P5:- COPY OF THE PKC ISSUED BY SRI.LOUIS GREGORY.

EXT.P6:- COPY OF THE PKC ISSUED BY SRI.A.V.JOSEPH EX-MLA.

EXT.P7:- COPY OF THE PKC ISSUED BY SRI.V.K.KARUNAKARAN.

EXT.P8:- COPY OF THE GOVERNMENT LETTER NO.28274/FFP.B3/84/GAD DT. 28.3.84 ISSUED BY THE COMMISSIONER & SECRETARY TO THE GOVERNMENT.

EXT.P9:- COPY OF THE LETTER NO.91170/FFPA1/98/GAD DT. 17.4.99 ISSUED BY THE GOVERNMENT OF KERALA, TO THE RESPONDENT.

EXT.P10:- COPY OF THE "THAMARAPATHRA' GIVEN TO THE PETITIONER BY THE GOVERNMENT OF INDIA, DT. 25.8.88 ALONGWITH ENGLISH TRANSLATION.

EXT.P11:- COPY OF THE LETTER NO.119/44/93-FF.SZ DT. 9.6.99 ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P12:- COPY OF THE LETTER NO.119/44/93-FF. DT. MARCH, 2001 ISSUED BY THE RESPONDENT TO THE PETITIONER.

OP. NO.31622/2001

(CMP. NO.52270/2002)

EXT.P11:- COPY OF THE CERTIFICATE ISSUED BY THE VICAR OF THE LITTLE FLOWER CHURCH, NEDIAKAD DT. 26.10.87.

EXT.P12:- COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE PARISH PRIEST OF THE little FLOWER CHURCH, NEDIAKAD DT. 3.4.02.

EXT.P13:- COPY OF THE CERTIFICATE ISSUED BY THE VICAR OF ST.GEORGE CHURCH, VELLAYAMKUDY DT. 6.4.02.

RESPONDENTS EXHIBITS

EXT.R1:- COPY OF THE DECISION OF THE DIVISION BENCH OF HONOURABLE CALCUTTA HIGH COURT IN MATTER NO.1941 /93 DT. 6.12.94.

EXT.R2:- COPY OF THE LETTER NO.112/ 4/93 FZ.GE DT. 9.6.98.

EXT.R3:- COPY OF THE LETTER NO.119/44/93/FF(SZ) DT. MARCH 2001.

/TRUE COPY/

P.S. TO JUDGE

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T.R. Ramachandran Nair, J.

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O.P.NO.31622 of 2001-M

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Dated this the 3rd day of August, 2007

JUDGMENT

The petitioner who is a freedom fighter, is aggrieved by the denial of pension under the S.S.S. Pension Scheme. Exts.P11 and P12 are under challenge in this original petition.

2. The case of the petitioner is that he had actively participated in the struggle for the Responsible Government during the freedom struggle. An arrest warrant was issued against him by the First Class Magistrate, Thodupuzha in connection with C.C. No.59/122 on September 1946. It is his case that he remained underground for a period of more than one year from September 1946 to September 1947.

3. The petitioner is also a recipient of Kerala Freedom Fighters' Pension as evidenced by Ext.P2 which is dated 25.10.1983. The Government of India has honoured him by conferring "Thamrapathra" (Ext.P10) on 15.8.1988. In spite of all these, he is at the receiving end as far as the request for benefit under the S.S.S. Pension Scheme is concerned. The application submitted by the petitioner has been produced in the writ petition as Ext.P3 which is dated 29.10.1987. In Ext.P3, in column No.11

the petitioner has clearly stated that he had participated in the struggle for the responsible Government and a warrant of arrest was issued by the First Class Magistrate, Thodupuzha in case C.C. No.59/122 on September 1946. It is also stated that many of his co-workers were arrested and he went underground as per the directions of leaders and came out after independence of the State in September 1947. He has produced certificates from prominent freedom fighters evidenced as Ext.P4 (issued by Shri Cherian J. Kappan, Ex.M.P.), Ext.P5 (issued by Shri Louis Gregory), Ext.P6 (issued by Shri A.V. Joseph, Ex. M.L.A.) and Ext.P7 (issued by Shri V.K. Karunakaran). These certificates will show that they have testified the facts relating to the petitioner. The certifiers have also stated the details regarding their imprisonment, etc. in these certificates. Therefore, the above certificates satisfy the stipulations of Ext.P1 scheme. As far as the certificate issued by Shri V.K. Karunakaran is concerned, the same has been recognised by the Government of Kerala as per Ext.P8 specifying that the certificate issued by him is acceptable. Ext.P9 is the report forwarding the recommendation of the State Government to the Central Government making it clear that the applicant is eligible for the S.S.S. Pension. The proceedings referred to the enquiry conducted through the District Collector, Idukki and the fact that the District Advisory Committee held on

13.11.1992 had recommended the case of the petitioner for S.S.S. Pension.

4. In Ext.P11, the main reasons pointed out to reject the application of the petitioner are that: (1) The N.A.R.C. is not acceptable; (2) The Personal Knowledge Certificate cannot be considered without valid and acceptable non-availability of records certificate; (3) The jail sufferings for two years in respect of the certifiers is not proved based on any documentary evidence from official records; and (4) The records from the police station, warrant of arrest, etc. have not been produced. Apart from the above reasons pointed out in Ext.P11, in Ext.P12 one more reason is added stating that the applicant had gone underground not by way of any suffering but it can be treated only as a voluntary act since the same is as per the directions of the leaders.

5. The question is whether the above reasons are correct and will stand scrutiny. One thing that has to be noticed herein is that the approach made by the Central Government in Exts.P11 and P12 is too technical and it ignores the relevant aspects including the recommendation by the State Government. The process of enquiry by the State Government involves various functionaries like the revenue officers as well as the District Advisory Committee, the report of the Collector and the ultimate recommendation of the State Government. All these have been in favour of

the petitioner. In Exts.P11 and P12, there is no consideration of these aspects, evidently. Now, when we consider the validity of the reasons in Exts.P11 and P12, it may be relevant to notice certain vital aspects also. In Ext.P1 Scheme, column 9 refers the evidence required to prove the claim. According to sub-clause (a) of the same to prove imprisonment/detention, etc., the applicant has to produce certificate from the concerned jail authorities, District Magistrate or the State Government in case of non-availability of such certificates, co-prisoner certificates from a sitting M.P. Or M.L.A. Or from an Ex.M.P. or an Ex-M.L.A. Specifying the jail period. As regards sub-clause (b) relating to remaining underground, what is required are: (i) documentary evidence by way of Court's/Government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention; and (ii) Certificates from veteran freedom fighters who had themselves undergone imprisonment for two years or more if the official records are not forthcoming due to their non-availability.

6. Judged in the light of the above requirement of the scheme, the certificates Exts.P4 to P6 will show that they are in tune with the requirements. The certificate Ext.P4 is issued by Shri Cherian J. Kappan, Ex.M.P. who has clearly stated that he had suffered actual imprisonment for

more than tree months during the freedom struggle and was lodged in the Central Jail, Trivandrum during the period from July 1946 to September 1947 (15 months actually). He has certified the details regarding the period, the petitioner was remaining underground and Case No. C.C.59/1122 M.E. is also mentioned therein. Being a certificate from an Ex.M.P., it is one covered under the Scheme. He is also a recipient of "Thamrapathra". Ext.P5 is the certificate issued by Louis Gregory who has suffered actual imprisonment for more than five years and was lodged in Central Jail, Trivandrum for various periods in connection with C.C.Nos.54/114, 14/47, 26/122 and 25/115. He is also a recipient of Central Freedom Fighters Pension. In Ext.P6, Shri A.V. Joseph, Ex. M.L.A. who is also a recipient of Central Freedom Fighters Pension, has given the details of jail term, etc. regarding him, i.e. more than three years during different periods. As far as the certificate of Shri V.K. Karunakaran is concerned, it is evident that he is a recipient of Central Freedom Fighters' Pension and has also suffered actual imprisonment for more than five years and the respective periods are mentioned in the certificates itself. Ext.P8 amply prove that Shri V.K. Karunakaran is a person whose certificates have been recognised by the Government as acceptable since he has suffered imprisonment for more than five years. In view of the above certificates, the view taken in Ext.P11 that

the N.A.R.C. produced is not acceptable, is not correct. The reason that the Personal Knowledge Certificates cannot be considered without valid and acceptable non-availability of records certificate, is also not correct for the reason that when the State Government has recommended as per Ext.P9 the eligibility of the applicant, the reason that no valid N.A.R.C. is not produced, is unsustainable. I am fortified in this view by the judgment in O.P. No.7749/2000 of a learned single judge of this court. That was also a case coming under the S.S.S. Pension Rules 1980. There also the objection taken was that the applicant did not produce non-availability of records certificate from the State Government and that the certificate produced from Shri V.K. Karunakaran (similar to the one issued herein) and another freedom fighter are not acceptable as jail records of the certifiers are not produced. After following the decision of this court in 1996 (2) KLT 1035, His Lordship was pleased to hold as follows:

> "The only point raised in the counter affidavit is non-production of non-availability records certificate (NARC) from State Government. After considering NARC from the Judicial First Class Magistrate's Court and after considering the two certificates issued from the veteran freedom fighters and on local verification through District Collector, State Government recommended pension from the SSS

> Scheme. After recommendation from State Government it cannot be rejected mainly on the ground that NARC was not given by the State Government."

Therefore, in the light of the above decision, the view that the State Government has not verified the details as regards the N.A.R.C., is not correct. In similar circumstances in **Pappu Kesavan v. Union of India** (1996 (2) KLT 1035), this court had considered a similar issue relating to an application under the S.S.S. Pension Scheme, 1980. In paragraph 9, their Lordships held that "a freedom fighter who had undergone imprisonment for more than five years, was deemed to be a prominent freedom fighter as per the Central Scheme. Shri V.K. Karunakaran who issued the certificate, has stated in Ext.P6 itself the periods during which he was in prison. There is no finding in Ext.P8 order that Shri V.K. Karunakaran had not been in jail during the period mentioned in Ext.P6. If so, how could it be said that Shri V.K. Karunakaran had not undergone imprisonment for more than five years. The authority has not referred to any material or reason whatsoever in Ext.P8 for reaching a finding that Shri V.K. Karunakaran had not undergone imprisonment for more than five years?" Herein, neither in Ext.P11 nor in Ext.P12 there is any finding adversely as regards the acceptability of the certificate from co-prisoners. The veracity of those

certificates have not been disputed also in the counter affidavit filed here. The only finding is that "since the certifier's own suffering for 2 years is not proved on the basis of documentary evidence from official records, hence it is not acceptable." Apparently Ext.P1 scheme does not require that the jail records of certifiers should also be produced along with the application or along with their certificates. Apart from that, in this case the State has verified all those certificates evidently and was satisfied about their credentials when the State has recommended the application of the petitioner. Therefore, a further insistence to prove their jail term is not required at all to consider the claim of the petitioner for pension.

7. The approach made by the authorities is therefore too technical and such insistence for of minute details is not the requirement of law. The Supreme Court in **Gurdial Singh v. Union of India and others** ((2001) 8 SCC 8) has clearly held "the standard of proof required for is not the same as is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. Since the object of the Scheme is to honour and to mitigate the sufferings of the freedom fighters, a liberal and not a technical approach should be made. Hence, the claim under the Scheme should be determined on the basis of probabilities and not by applying the test of "beyond reasonable doubt". Once on the basis of the

evidence, it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

8. One another reason stated in Ext.P12 to reject the application is that since the petitioner had gone underground due to the direction of leaders, the same is treated as voluntary act which is not considered as a suffering under the S.S.S. Pension Scheme. This conclusion is based on the statement in his application that "went underground as per the directions of leaders on September, 1946 to September, 1947". I may point out here that the said finding is not correct because in column No.11 in Ext.P3 application, he has stated his underground suffering in the following terms:

> " Participated in the struggle for the responsible Govt. and a warrant of arrest issued by the Ist Class Magistrate, Thodupuzha in case C.C. No.59/122 on Sept. 1946. Many of my co-workers were arrested and I went underground as per the direction of Leaders and came out after independence of the State on Sept. 1947."

The said paragraph will show that there was a warrant of arrest issued by the Ist Class Magistrate, Thodupuzha in case C.C. No.59/122 in September 1946. Many of his co-workers were arrested and hence he went

underground as per the direction of leaders. Therefore, it is evident that his underground suffering was based on the warrant of arrest itself. Since other co-workers were arrested, he was advised by leaders to evade arrest. Therefore, it is not a case where he had gone underground as a voluntary act as observed in Ext.P12. The last sentence in that paragraph has been taken out to find that he went underground due to the direction of leaders. The other aspects were not considered at all. A reading of the entire paragraph as extracted above, will show that it was not a voluntary act but pursuant to the warrant issued. Hence, the findings rendered in Ext.P12 on that score is also without any application of mind and is perverse. It is clearly an error of fact which is apparent on the face of the record itself.

9. It is also worthy to mention here that the petitioner is a bonafide freedom fighter who is already the recipient of pension under the State Scheme and also had been honoured by the Government of India by conferring “Thamrapathra”. It is unfortunate that even in such cases a hyper technical approach is made to deny the benefit. The Supreme Court has re-emphasised in various decisions that a freedom fighter is entitled for respect and honour and their sufferings have to be accepted for granting a benefit under the Scheme. The approach, at any rate, made herein does not reflect the principles laid down in the above decisions.

10. When the decision of a statutory/administrative authority is tainted by non application of mind and by errors apparent on the face of the records, this court will be justified in interfering with the same. Even an error of fact is amenable to judicial review as held by the Supreme Court in **Cholan Roadways Ltd. G. Thirugnanasambandam** ((2005) 3 SCC 241).

11. In the light of the above legal principles, I hold that Exts.P11 and 12 are unsustainable and the same are held illegal. Consequently, it is declared that the petitioner is eligible for grant of pension under the S.S.S. Pension Scheme. The respondent herein is directed to pass consequential orders including the right to receive arrears from the date of application, within a period of six weeks from the date of receipt of a copy of this judgment.

The Original Petition is disposed of as above. No costs.

(T.R. Ramachandran Nair, Judge.)

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O.P. No.31622 of 2001-M

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JUDGMENT

3rd August, 2007.